PROSECUTION MANAGEMENT IN NORTH CAROLINA

1995

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NORTH CAROLINA PROSECUTION MANAGEMENT IN 1995

INTRODUCTION

North Carolina has 100 counties and 39 prosecutorial districts that are mostly identical to judicial districts. The state has a population of approximately 7.5 million in 1999, most of whom reside in six urban areas. The largest prosecutorial district is the 26th, Mecklenberg County with 33 appropriated assistant district attorney (ADA) positions and 12 funded by either grants or the city of Charlotte. The offices range in size from 2 to 45 ADAs. The median office size is four ADAs.

District attorneys most often represent multiple counties. Two offices represent seven counties each, four have five counties in their jurisdictions, the median[1] number of counties in a prosecutor's jurisdiction is two.

The unique features of the office of district attorney in North Carolina include:

- Prosecutors are in the judicial branch of government, administered by the Administrative Office of the Courts (AOC)
- The AOC prepares the budgets for the prosecutors' offices and allocates legal assistant positions
- Superior court judges "ride circuit" within judicial districts
- By statutory authority, the prosecutor sets the docket

In 1995 the Jefferson Institute conducted a resource analysis for the North Carolina Conference of District Attorneys, an independent statutory body attached to the AOC for administrative purposes. The activities of the Conference include providing training and technical assistance to the prosecutors, assisting in legislation, and the improvement of prosecution management throughout the state.

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[1] The median is the point where 50 percent of the offices are below the value and 50 percent are above the value.

The analysis of the resources indicated that the prosecutors were 115 positions below actual and projected caseloads and deficient in at least the same amount for support staff. Over the next two years, the legislature increased the number of attorneys by 115 but the number of support staff was only increased by half. Generally speaking, the offices of the district attorneys have a minimum level of resources but not an abundance.

It is important to maintain offices at reasonable staffing levels. However, when resources are strained, it is more important to manage them efficiently and effectively. Good management is a goal for all prosecutors but the underlying questions are, what is good management and how does one know when it has been achieved? Furthermore, if management needs to be improved, then how is this diagnosed and what are the performance measures that should be used? Finally, is there a need for additional funding and other resources to bring the management of prosecutors' offices up to an acceptable level?

This report presents an approach for evaluating the management needs of prosecution statewide It describes the results of a needs assessment that was conducted in 1999 by the Jefferson Institute as part of its BJA funded program to Promote Innovation in Prosecution (Grant No. 97-DD-BX-0006). It demonstrates that it is possible to examine prosecution management in diverse communities across the state and assess the level of prosecution statewide. It also describes an approach that allows the Conference of District Attorneys and prosecutors to determine where additional resources are needed.

PURPOSE AND OBJECTIVES

The purpose of this assessment is twofold. At the state-level it assesses the state of prosecution management, identifies areas of strength and weakness, examines the alignment of state and federal resources with need, and provides a technique for developing long-term strategies to improve prosecution management statewide.

At the national level, this assessment serves to demonstrate a technique that could be adopted, with some adjustments, by other states.

The value of this technique is that, for the first time, states may obtain a large picture of the status of prosecution services and decide where resources should be placed so they provide the most efficient and effective services in a uniform and consistent manner throughout the state. Further, over time, this technique allows a state to monitor changes and allocate resources in response to changing trends. Many prosecutors may be threatened by the idea of assessment. Elected prosecutors may fear that weaknesses found in their offices will be used by the opposition to defeat them. These may be legitimate concerns if the management of their offices is the issue. The purpose of a statewide assessment is not to evaluate individual offices but rather to determine whether, given the present level of resources, prosecution services are being delivered uniformly across the state and in what areas should funds and resources be directed to improve or sustain the highest quality of prosecution possible.

METHODOLOGY

The needs assessment in North Carolina has two ingredients:

1. A survey of prosecutors to obtain baseline information about prosecution and its variations across the state;

2. The development of criteria to assess the level of prosecution management and its compliance with generally accepted prosecution management principles (GAPMAP)

3. A synthesis of the findings to identify areas of need and priorities for action.

Thirty-one of the 39 district attorney's offices responded to the survey. The responses were representative of the distribution of offices in the state.

After the survey responses were analyzed, the results were compared to generally accepted management principles and the levels of compliance with the principles were noted. This produced a picture of the strengths and weaknesses of prosecution management statewide. It also identified areas needing attention.

The results of the analysis were then synthesized to identify gaps in management improvement needs and priorities for the allocation of future funds and resources.

The analysis focused on five basic management issues confronting every prosecutor's office regardless of size or type. They are:

1. Police-prosecutor interface
2. Intake and screening
3. Case management
4. Organization and administration
5. Space, equipment and automation

The analytical strategy identifies deficiencies and strengths within each of the above issue areas, examines the level of deficiency statewide, assigns priorities to the needs and then determines whether funds are aligned with the needs.

Preliminary findings were presented to a representative group of prosecutors for validation and to gain more insight about the qualitative aspects of prosecution needs. The final report was prepared for the North Carolina Conference of District Attorneys.

The focus of this study is the status of prosecution management statewide and the identification of areas where improvements are most feasible and bring the greatest savings in the delivery of prosecution services.

ORGANIZATION OF THE REPORT

The report is divided into three sections.

In Section one, the criteria used to evaluate prosecution management are described. These criteria are stated in the form of generally accepted management principles. They represent goals for the essential functions of prosecution and allow the assessment to identify practices that enhance or support these goals.

Section two discusses the conceptual framework for the statewide assessment and highlights the differences between estimating professional levels of compliance and accounting for the influence of office size on systemic effects.

Section three presents a synthesis of this assessment summarizing the strengths and weaknesses and recommending "next steps" for action.

Appendix A contains a copy of the survey instrument.

I. CRITERIA FOR EVALUATING PROSECUTION MANAGEMENT

Assessments of the delivery of services to the public require standards and performance measures to act as a baseline against which actual operations are compared. Assessing the delivery of prosecution services is no different. What is needed are standards or principles against which prosecution practices can be compared to determine their ability to support or enhance the principles.

A set of Generally Accepted Prosecution Management Principles (GAPMAP) has emerged over time from commissions such as the *National Advisory Commission on Criminal Justice Standards and Goals: Courts (1973)*, professional organizations such as the American Bar Association Standards for Criminal Justice for Prosecution Function and Defense Function, National District Attorneys Association's *National Prosecution Standards, Second Edition (1991).* They also stem from generally accepted management principles as espoused by the American Society of Public Administration, and as observed in practice by criminal justice researchers including the staff of the Jefferson Institute and its teams of experts and practitioners. Many prosecution management principles may also be found in the *Prosecutor's Guides to Intake and Screening (1998), Case Management (1999), Management Information (1999) and Police-Prosecutor Relations (1999)* developed by the Jefferson Institute for Justice Studies as part of the Promoting Innovation in Prosecution project. A discussion of performance management issues is also published in *Basic Issues in Prosecution and Public Defender Performance (1982).* GAPMAP is merely a compilation of management principles that have been tested over time and found to be reliable.

The value of management principles lies in their ability to:

1. Relate prosecutor goals and objectives to the basic functional areas of prosecution - intake, adjudication, post-conviction activity and the interface with law enforcement

2. Establish a baseline for assessing the level of prosecution management in an office or statewide

3. Identify functional areas that are in compliance with management principles and note areas that are deficient

4. Assist in the development of prosecution programs and plans that increase compliance with GAPMAP.

GAPMAP sets forth principles for prosecution management and operations in the following areas:

* The police/prosecutor interface
* Intake and screening
* Case management
* Organization and administration
* Space, equipment and automation

Management principles are rules or codes of conduct that enable prosecutors to deliver prosecution services efficiently, effectively, and equitably. They are implemented by policies and practices. Compliance with management principles may be measured by the number of policies and practices that are being used which support or enhance the principles.

For example, prosecutors' offices that have written guidelines for the types of cases that should be declined or conditions when further investigations should be ordered are more likely to have better control over what is accepted for prosecution than offices with *ad hoc* procedures.

Some prosecutors may believe that although management principles represent laudable goals, they are not achievable because they lack resources or have little or no control over the inefficient practices of others. Quite the opposite is true. Good management increases the productivity of the office and strong leadership influences the practices of others.

To test compliance with generally accepted management principles, a set of practices were identified for each of the five areas. These practices serve as indicators of conditions that are consistent with the management principles. If the practices are not in evidence, then the principle being examined is noted as being deficient. If they are in existence, then we assume that there is compliance. For example, if the chief prosecutor and the heads of the law enforcement agencies meet regularly, then this practice is consistent with the GAPMAP principle that supports regular open communication between the prosecutor and law enforcement agencies at the policymaking level. As the

number of practices that are consistent with a principle increases, so does the strength of the compliance.

In this assessment each GAPMAP area was represented by a number of practices or indicators of good management. They are distributed as follows:

Management area	Number of practices
Police-prosecutor interface	29
Intake and screening	20
Case management	17
Organization & Administration	15
Space, equipment & automation	9
Total	90

The statewide scope of this needs assessment examines the delivery of prosecution services at the state level. For example, one practice that strengthens intake and charging decisions is using experienced trial attorneys for review and charging. The statewide examination looks at the percent of offices that use this practice. A high percent of use reflects the acceptance of a good management practice statewide. On the other hand, if most offices allow any assistant to review cases and make charging decisions, then the Conference of District Attorneys might consider developing workshops or communications to assist prosecutors in making changes.

The purpose of the statewide assessment is to identify strengths and weaknesses in the delivery of prosecution services and use this knowledge to make long-term improvements using a variety of techniques such as training, workshops, technical assistance, demonstration projects and developing new materials and statewide management guidelines.

GENERALLY ACCEPTED PROSECUTION MANAGEMENT PRINCIPLES

The following are the management principles that were used for each of the assessment areas and the policies and/or practices that reflect them.

Police-Prosecutor Interface

Prosecutors should use practices that enhance and support communication, coordination and collaboration between law enforcement agencies and the prosecutor's activities. These practices may include:

1. Regularly scheduled communication with law enforcement about policy and priorities
2. Timely, complete and responsive investigative reports
3. Availability of prosecutors to law enforcement
4. Close coordination and joint programs between investigators and prosecutors
5. Law enforcement involvement in case processing and outcomes
6. Efficient use of prosecution and law enforcement time

Intake and Screening

Prosecutors should use practices that enhance and support the ability of the office to make decisions about acceptance and charging that are uniform and consistent with office policy, are based on complete investigative information and are made in a timely manner. These practices may include:

1. Charging and declination policies communicated to all interested parties
2. Charging decisions uniformly made consistent with policy
3. Felony and misdemeanor cases reviewed prior to filing in the court or at the earliest possible time

4. Charging decisions made by experienced trial attorneys – no assistant shopping

5. Procedures that monitor requests for additional information

6. Citizen complaints screened initially by law enforcement, not magistrate or prosecutor

Case Management

Prosecutors should use practices that support the ability of the prosecutor to dispose of cases with acceptable sanctions or outcomes in a timely manner and with the least use of resources. These practices may include:

1. The concept of differentiated case management

2. The use of alternatives to criminal prosecution

3. Administrative not adversarial prosecution

4. Reductions in case processing time

5. Accountability in the decision making process

6. Uniform and consistent plea negotiation and dismissal policies

Organization and Administration

Prosecutors should use practices that increase productivity, encourage problem-solving, support accountability, and increase innovation and change. Practices may include:

1. Leadership and openness to change

2. Availability and use of management information

3. Management and operations by teams if feasible

4. Accountability

5. Use of alternative funding sources

6. Community involvement

Space, Equipment and Automation

Prosecutors should have sufficient space, adequate equipment and up-to-date technology to enable them to work comfortably, safely and productively. Sufficiency includes:

1. Space to support all the activities of the office including:
   Reception/waiting, conferences and interviews, legal research, staff amenities, work stations for support staff, investigators and victim-witness services, case preparation and training.

2. Adequate equipment including:
   Up-to-date copiers, fax machines, telephone answering systems, pagers, cell phones, personal computers for each employee

3. Management information systems
   Integrated with law enforcement and court systems, and other specialized activities, e.g. juveniles, child support enforcement, etc.
   Satisfying the management and operational information needs of prosecutors.

II. SUMMARY OF FINDINGS

In this section we present a summary of the survey results. The findings are organized into the five management areas: police-prosecutor interface; intake and screening; case management; organization and administration; and, space, equipment and automation.

We assess compliance with GAPMAP by recording the percent of offices that have practices that conform to generally accepted management principles within each of the five management areas and then weighting the practices by their relative importance to the establishment of good management in each area.

For example, if 23 percent of the offices state that they have regularly scheduled meetings with the chiefs of law enforcement agencies and 63 percent state they have meetings as needed, the 23 percent is the score that is recorded for the assessment because it is in conformance with the principle.

Summary of levels of compliance

Statewide, the median level of compliance is 44. The highest levels of management compliance are recorded for space, equipment, and automation (51 percent), followed organization and administration and case management at 44 percent. The lowest scores are recorded for police-prosecutor interface (34 percent) and intake and screening (33 percent). (Figure 1).

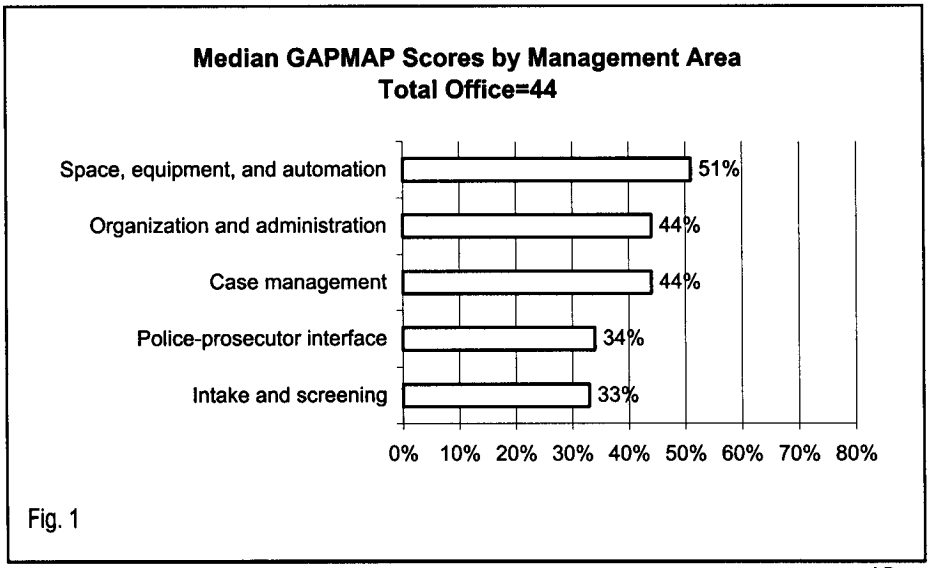


Fig. 1

Of great interest is the uniformly high levels of compliance in all areas. Four of the five management areas have compliance rates in the 60 percent range; the exception being organization and administration which has a 56 percent compliance rate.

The questions that the reader should ask are: are these results adequate; how high can compliance levels be raised; and, how can it be accomplished. Answers may be found by looking at each of the management areas and identifying where strengths and weaknesses appear to exist.

In the following sections, we describe the results of the prosecutors' survey completed by 55 offices for each of the five GAPMAP areas. Generally, the findings are stated either as the percent of offices responding to each question, or as the median of a distribution.

The findings follow a standard format. First there is a statement about the importance of each practice to GAPMAP principles. The statement describes the value of the practice and why it is an indicator of the management principle being discussed. Then the results of the Michigan survey are presented either as the percent of offices responding to each question or as the median of the distribution of responses.

The responses are generally presented as graphs. The bottom left hand corner identifies the question in the survey. The bottom right hand corner identifies the number (n) of responses.

III. COMPLIANCE LEVELS IN EACH MANAGEMENT AREA

POLICE-PROSECUTOR INTERFACE

Prosecutor offices were examined for their use of practices that enhance and support the interface between law enforcement agencies and the prosecutor's activities. These practices include:

1. Regularly scheduled communication with law enforcement about policy and priorities
2. Timely, complete and responsive investigative reports
3. Availability of prosecutors to law enforcement
4. Close coordination and joint programs between investigators and prosecutors
5. Law enforcement involvement in case processing and outcomes
6. Efficient utilization of prosecution and law enforcement time

Statewide Compliance with GAPMAP

The median state level of compliance for the police-prosecutor interface is 34 percent. The range of scores among individual offices is between 80 percent and 14 percent. The wide variation suggests that there is a real opportunity to improve police-prosecutor interfaces and thereby improve communication, coordination, and collaboration.

It appears from the following examination that practices which should be strengthened include:

- Hold regularly scheduled meetings between police chiefs and sheriffs and the district attorney to discuss mutual policy and priorities
- Reduce the number of days before the prosecutor receives felony reports
- Increase informal training and notifications
- Improve police-prosecutor communication about prosecutions

- Strengthen the role of police officers as witnesses and case advocates.

1. Regularly scheduled communication with law enforcement policymakers

Prosecutors typically deal with multiple law enforcement agencies, a condition that increases the need for good communication and coordination at the highest policy levels as well as operationally.

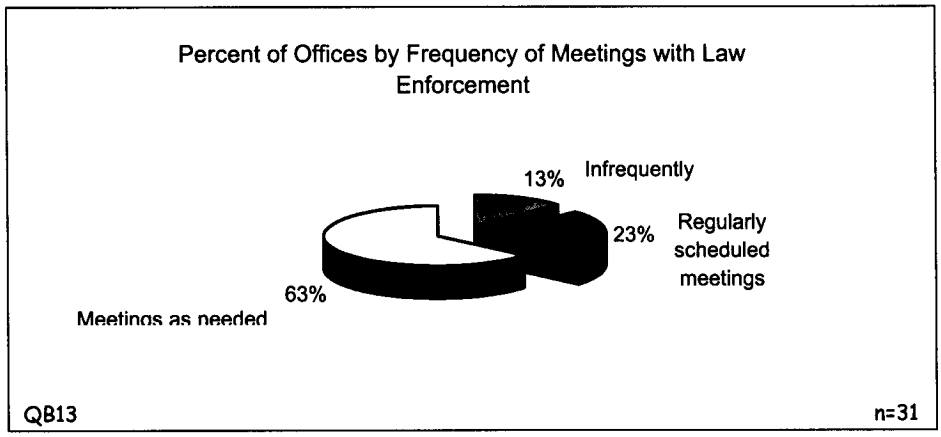
Multiple law enforcement agencies require extra emphasis on communication and coordination. The median number of agencies is 11.

In North Carolina,

- The median number of law enforcement agencies referring cases to a prosecutor's office is 11.
- The fewest number of agencies is 4, the largest is 32 .

Communication and coordination are key factors in improving the interface between police and prosecutors. Regularly scheduled meetings with the chief policy makers in law enforcement and the prosecutor allow the two parts of the criminal justice system to exchange ideas, discuss issues and establish policies that are more likely to succeed when implemented.

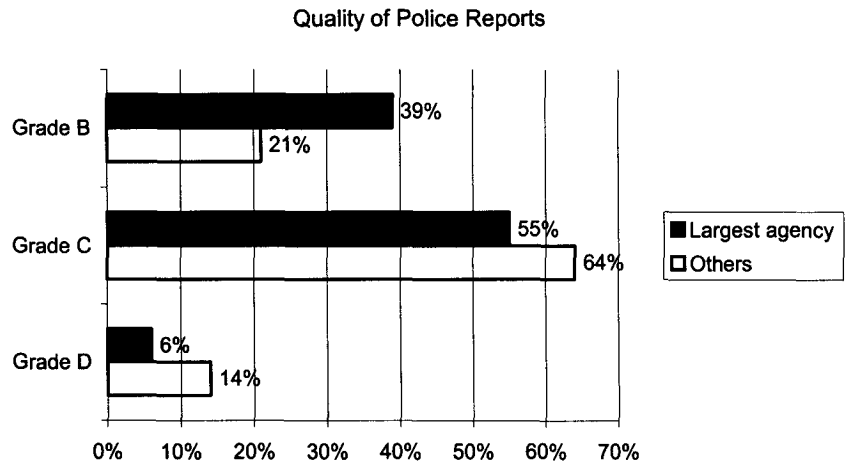
About 23 percent of the prosecutors have regularly scheduled meetings with the chiefs of the local law enforcement agencies to discuss mutual problems and priorities.



2. *Timely, complete and responsive investigative reports*

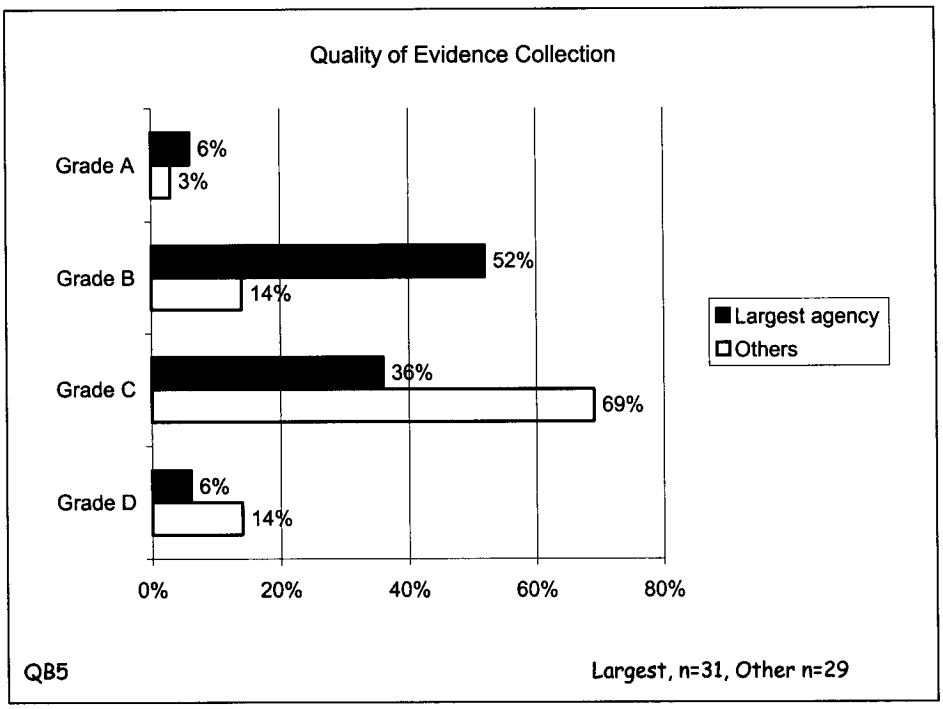
When prosecutors have multiple law enforcement agencies in their jurisdictions, they encounter wide variations in the quality of reports, evidence collection and handling because of differences in employment criteria, training, and pay. Many of the problems associated with multiple agencies are reduced if one agency supplies most of the caseload to the office. Generally prosecutors receive higher quality reports from large departments than from smaller ones.

Large departments do not typically supply the majority of cases to the prosecutor. The median percent of cases referred by the largest agency is 40 percent of all referrals.



QB4 Largest, n=31 Others, n=29

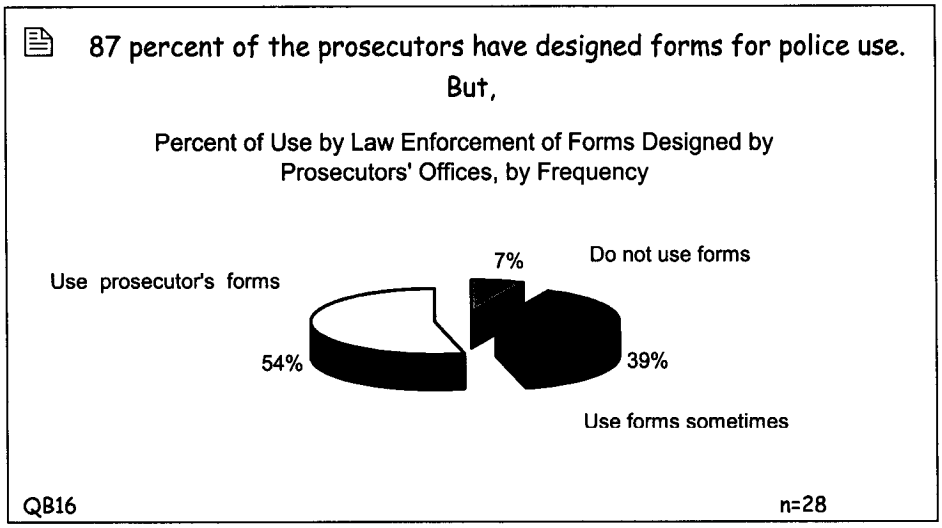
Prosecutors assess the quality of all police reports, regardless of origin, as average, C. They observe differences between large and small departments only in the quality of evidence collection and protection where larger agencies receive a higher grade (B) than smaller agencies (C).



Prosecutors rate the quality of the evidence collected by the largest agencies as B and C for the smaller agencies

Investigative reports are the foundation upon which prosecution builds its cases. They should contain information needed by prosecutors. If prosecutors develop forms for law enforcement use, they increase their chances of obtaining needed information.

Although most prosecutors (87 percent) have designed report forms for law enforcement use, only 54 percent report that they are used regularly by law enforcement agencies.



Timely reports from law enforcement are important for proper charging decisions. Delays in submitting reports produce delays in charging that may provoke other problems. One may be unnecessary cost to the public if pretrial detention is ordered and the case is ultimately declined or dismissed. Another may be the release of defendants who should be detained. Charging decisions should be made before cases are given formal status in the court system. Prosecutors should control the gate to the court. Their ability to do so is weakened if reports are not submitted in a timely fashion after an arrest.

The majority of prosecutors indicate that police reports are not being forwarded to them in a timely fashion.

In North Carolina,

Median Number of Days to Receive Felony Reports for:

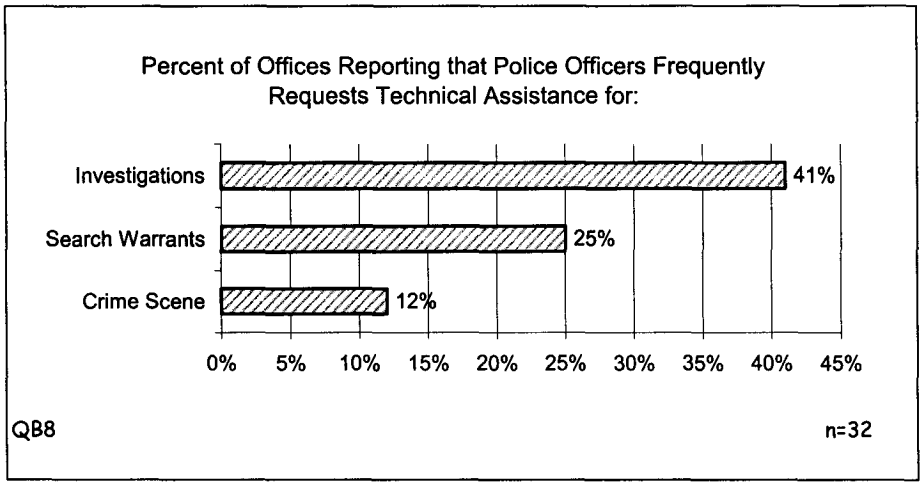
Violent Crimes	14
Property Crimes	20
Drug Crimes	15

Percent of Offices Receiving Reports in 10 Days or Less for:

Violent Crimes	39%
Property or drug crimes	31%

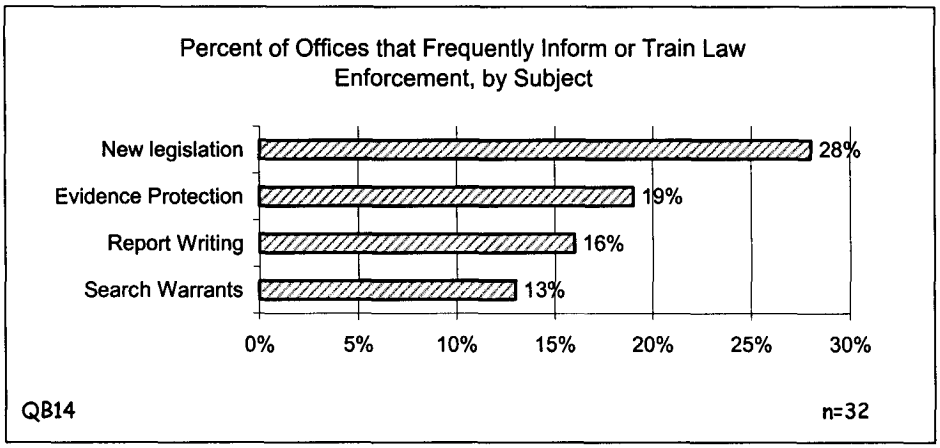
3. Availability of prosecutors to law enforcement

The police-prosecutor interface is strengthened by teamwork. A team approach improves working relationships and helps prosecutors obtain appropriate dispositions. When team concepts are operational, there are high levels of communication and interaction. One indicator of teamwork is the frequency with which investigators seek advice and assistance from prosecutors about investigations, activity at the crime scene or for search warrants.



Statewide, prosecutors are more likely to interact with law enforcement (41 percent) about investigations than preparing search warrants or assisting at crime scenes.

Police-prosecutor relationships are a two way street. Prosecutors should keep police informed about new legislation and assist departments that need additional training or help in the basic areas of report writing, evidence protection or search warrants. Even small prosecutor offices can provide information or on-the-job training to law enforcement. If agencies work as a team, sharing common goals, we would expect to find high levels of communication and training. The frequency with which information and training are provided to law enforcement indicates the level of interaction between the two agencies.



Statewide, few prosecutors (28 percent) *frequently* provide law enforcement with information about changes in legislation, or provide training in the areas of evidence protection, report writing or search warrants.

4. Close coordination and joint programs between investigators and prosecutors

The advantages of close working relations between law enforcement agencies and prosecutors are many, including:

- Prosecutors can provide informal on-the-job training to police
- Both agencies, law enforcement and prosecutors, gain an understanding of the needs and demands faced by each other
- Police are more responsive to prosecutors' requests and accountability is increased in both agencies
- Coordinating with law enforcement on mutually agreed upon priorities can expand the relatively limited resources of prosecutors

Coordination between law enforcement and prosecution often occurs informally when the specialization in the investigation bureaus is matched by a parallel specialization on the part of the prosecutor; for example, when homicide investigators work closely with assistants who are assigned violent crime cases. The advantages are those listed above. However, not all prosecutors or law enforcement agencies have the resources to specialize by crime type especially if they are small departments and small prosecutor offices. Despite this, coordination can be achieved informally even if it is not organizationally identifiable.

In North Carolina,

38 percent of prosecutors work with investigators who are specialized by type of crime.

The prosecutor's participation in joint programs is another indicator of the level of police-prosecutor coordination. Joint programs with law enforcement may include career criminal programs, violent offender prosecution programs, child victimization and drug programs. Grant funding agencies have played a major role

in fostering coordination with increases in funding opportunities and emphasis on joint police-prosecutor programs.

In North Carolina,

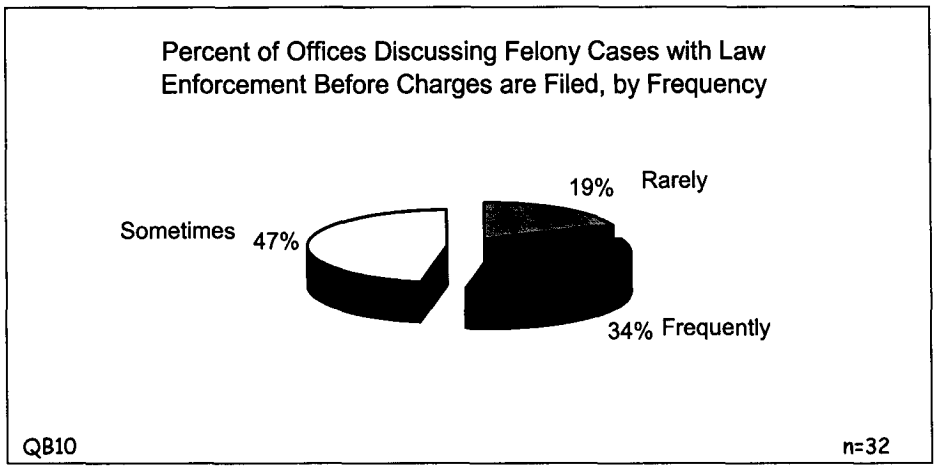
- Two out of three district attorneys' offices have joint programs with law enforcement.
- The median number of programs in these offices was three.
- The most prevalent programs focus on domestic violence (59 percent) child sexual abuse (53 percent) and drugs (44 percent).

QB7 n=32

Most prosecutors (66 percent) have taken advantage of joint police/prosecutor programs and their benefits.

5. Involve law enforcement in case processing and outcomes

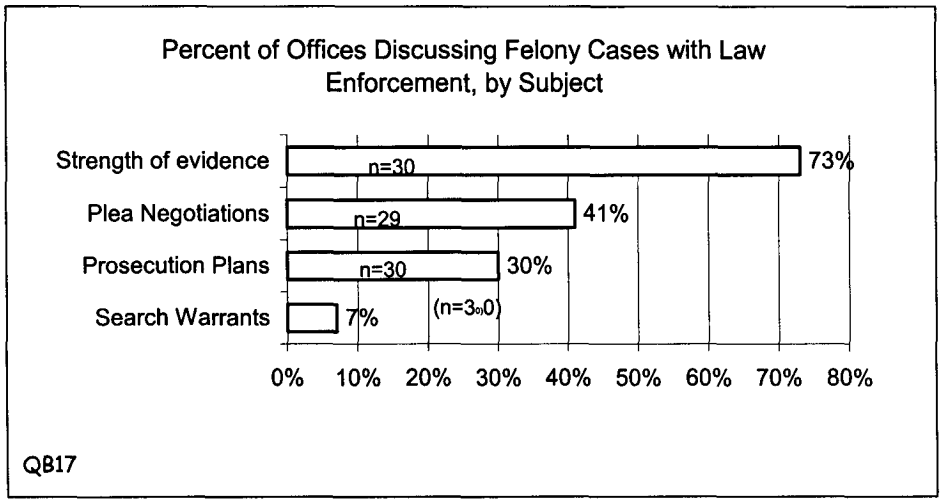
The more police become vested in the outcomes of cases, the stronger is the prosecutor's case. Vesting officers and investigators with knowledge about prosecution strategies and plans implies high levels of trust and confidence between the two agencies. One indicator of law enforcement involvement in case dispositions is the frequency of joint discussions about felony cases before charges are filed by the prosecutor and after the case has been accepted for prosecution. The frequency of police and prosecutor discussions about the strength of cases and the additional information or evidence that may be needed before charging decisions suggests the quality of police-prosecutor relationships that may exist later in the trial process.



The results suggest that working relationships between investigators and attorneys are not very strong at the pre-charging stage. Only 34 percent frequently discuss felony cases before charges are filed.

After charges have been filed, the level of communication between law enforcement agencies and prosecutors is another indicator of working relations and the degree of police interest in case outcomes. Prosecutors who work closely with law enforcement have frequent discussions about felony cases and specifically about such issues as the strength of the evidence, plea negotiation, the prosecution plan and search warrants.

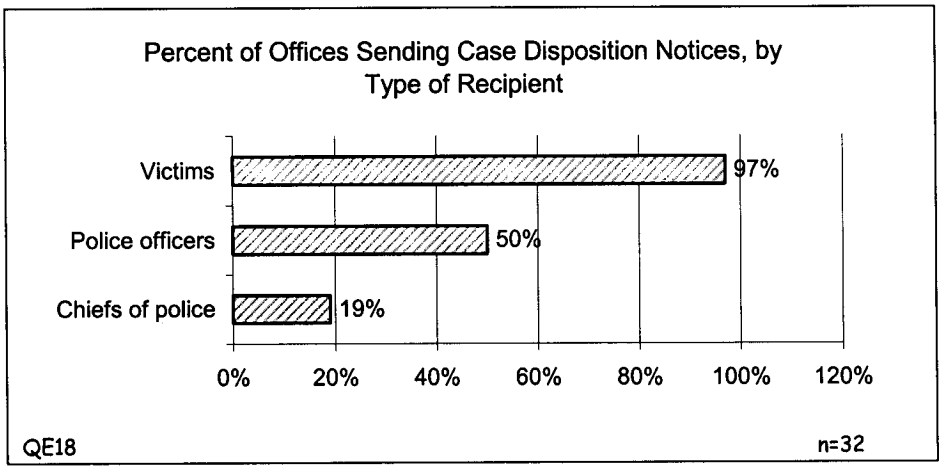
Prosecutors are more likely (73 percent) to discuss evidentiary matters with police than prosecution tacti including plea negotiations, prosecution plans and search warrants.



The recent emphasis placed on notifying victims about hearings and the status of cases highlights the importance of notifying *all parties* involved in the adjudication process, especially law enforcement agencies. The benefits are improved police-prosecutor relations, more efficient scheduling and reduced overtime costs. By

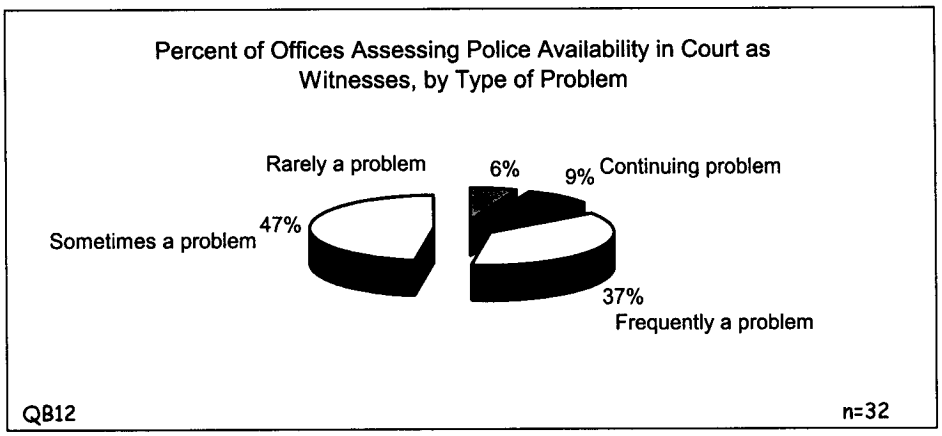
keeping law enforcement personnel informed about case status and dispositions, their vested interest in the case beyond just the arrest may be increased. Additionally routinely providing chiefs of police with case disposition reports keeps them informed about how their department is performing. Prosecutors should be able to extend the notification process to law enforcement by modifying existing victim notification procedures.

Case disposition notices are routinely provided to victims (97 percent) but less often to police officer (50 percent) and chiefs of police (19 percent).



6. Efficient use of prosecution and law enforcement time

Law enforcement availability in court has a significant effect on the prosecutor's ability to bring cases to disposition in a timely and acceptable fashion. The worse scenario is to have cases dismissed because the officer was not present. It is important that prosecutors develop simple procedures that reduce problems impeding police availability. These can take the form of using pagers or call backs for court scheduling, making appointments for police and prosecutors, and establishing single points of contact for the receipt of notices.



Police availability at court appearances is a continuing or frequent problem for 46 percent of prosecutors.

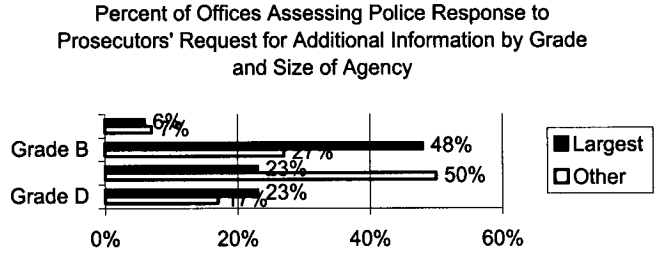
Law enforcement's responsiveness to prosecutors' requests for additional information is another indicator of police-prosecutor working relationships. If officers understand the prosecutor's need for sufficient evidence to support a conviction, they tend to be more responsive. Delays in responding to prosecutor requests increase the pile of "pending cases" and interfere with the ability of the prosecutor's office to make timely decisions.

54 percent of offices view the responsiveness of law enforcement to prosecutors' requests for additional information as good to excellent in the largest law enforcement agency. 34 percent view their responsiveness as good to excellent in smaller agencies.

In North Carolina,

- The median grade for responsiveness in large departments was B, good.
- In the smaller agencies, it was C, average.

QB11 *Largest n=31, Others N=30*



INTAKE AND SCREENING

Prosecutor offices were examined for practices that enhance and support the ability of the office to make decisions about acceptance and charging that are uniform and consistent with office policy, are based on complete investigative information, and are made in a timely manner. These practices include:

1. Felony and misdemeanor cases reviewed prior to filing in the court or at the earliest possible time

2. Charging and declination policies communicated to all interested parties

3. Charging decisions made by experienced trial attorneys based on adequate information

4. Citizen complaints screened by law enforcement, not magistrates or prosecutors

5. Programs available as alternatives to prosecution

Intake and screening is that part of the prosecution process that decides what charges to file and at what level. It may occur under three conditions: prearrest, when complaints or warrants are authorized by prosecutors; post-arrest, when police reports are forwarded to the prosecutor's offices for review and charging; or after charges have been filed in the court.

This part of the adjudication process activates one of the most important elements of prosecution, namely, the unreviewable discretionary power of the prosecutor to accept or decline prosecution and to set the charge. The prosecutor controls the gate to the courts. How well this control is exercised and managed makes the difference between accepting prosecutable cases or supporting the GIGO principle (Garbage In, Garbage Out).

State statutes or court rules may limit the ability of the prosecutor to exercise charging discretion until after arrests are made and cases are filed in the court. In these instances, it is all the more important that case review be conducted at the earliest possible point in the adjudication process. Even if statutory authority does not exist to provide for case review before filing, some prosecutors have introduced screening through cooperative agreements with law enforcement agencies.

Statewide Compliance with GAPMAP

The median state level of compliance for intake and screening is 33 percent. The range of scores among individual offices is between 68 percent and 10 percent. Of all management areas, this is the most important since it represents the "gate" to the adjudication process.

It appears that there is demonstrated need to reduce the wide variation among the offices and improve the overall management of the intake and screening function. Of special interest should be the establishment of practices that support strong management including:

- Felony case review before charges are filed by law enforcement agencies or before first appearance
- Reviewing misdemeanors prior to the court date
- Written guidelines for declinations and ordering further investigation
- Obtain the criminal history of the defendant
- Increase the types and quality of information contained in investigative reports
- Develop uniform procedures for law enforcement review of citizen complaints before warrants are requested.

1. Felony and misdemeanor cases reviewed prior to filing in the court or at the earliest possible time

The efficiency of the court is directly affected by the use and timing of prosecutorial review. Some states require prosecutors to review and authorize complaints before cases are filed. In other states, the statutes are silent about this practice. Prosecutorial review of cases is essential to our system of checks and balances in criminal justice. Case review for charging decisions is the defining characteristic of the American prosecutor and from a management view, it is the door to the adjudication process.

In North Carolina

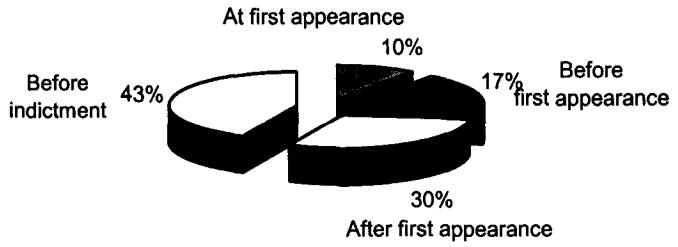
- 13 percent of the offices *authorize* felony charges before arrest
- 25 percent of the offices *review* felony cases before charges are filed in the court.
- Not a single office reviews misdemeanor cases before charges are filed.

Most offices (79 percent) review felony cases *after* they have been filed in court. Only one in four offices reviewed felony cases before charges were filed in court. No offices reviewed misdemeanor cases before filing.

The later in the process prosecutorial review occurs, the more likely it is that the court will process cases that should have been declined, could have been better investigated or more appropriately charged. The effect of delayed screening is to increase workload for all parties and add to court delay. The principle of early review before filing is an important one and many prosecutors are able to work around post-filing practices by informal means and mutual agreements between police and the prosecutor. The standard for early case review and screening applies equally to misdemeanors whose high volume requires screening to keep it under control.

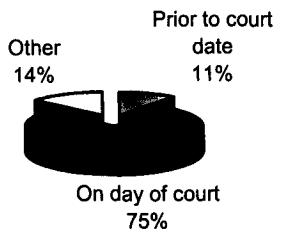
The majority of offices (70 percent) review felony cases before or at first appearance. Only one in ten offices review misdemeanor cases prior to the court date.

Percent of Offices Reviewing Felony Cases, After Arrest, by Location in Court Process



QC3-1 n=30

Percent of Offices Reviewing Misdemeanor Cases



QC3-2 n=29

Most misdemeanor cases are reviewed on the first day they appear in court.

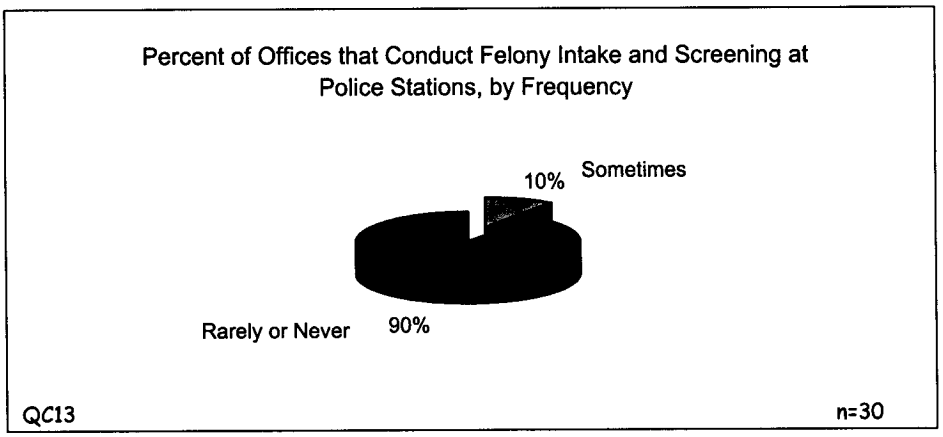
To reduce delays in charging, especially if the offender is detained, courts set limits on the amount of time the prosecutor has to file charges. Limits vary by state and court rule. Sometimes charges must be filed within 24 hours, sometimes 30 days may be acceptable if the offender is not detained. When charges have to be filed within 24 hours, the quality and completeness of police reports become urgent. When charges can be delayed for 30 days, the need for case management becomes critical.

In North Carolina,

- The median number of days between arrest and filing felony charges is less than one day if the suspect is detained.

In six out of ten offices, felony cases have to be filed within ten days or less.

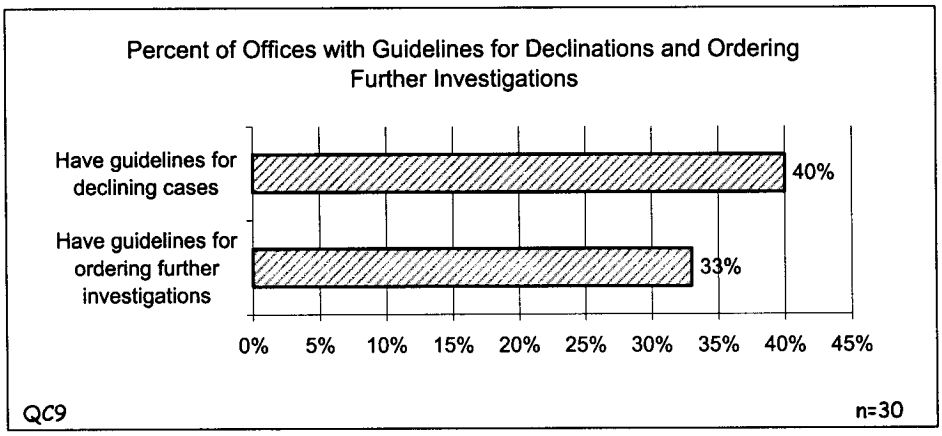
One practice that improves police reporting and provides better prepared reports is that of assigning attorneys to police stations for case review. Many offices may not have enough attorneys to permit this. As an alternative some offices schedule certain days or hours when attorneys visit police stations for case review. This practice is more likely to occur in urban areas where the volume of cases is high and investigators have large enough caseloads to benefit from on-site review. In some smaller offices, the assistants may regularly visit the sheriff's office to pick up jail lists and/or incident reports. Visits to stationhouses or jails enhances police-prosecutor relations and communication.



In a state where there are few large offices and little review of felony cases before filing, almost all prosecutors (90 percent) *rarely* conduct felony screening at police stations.

2. Charging and declination policies communicated to all interested parties

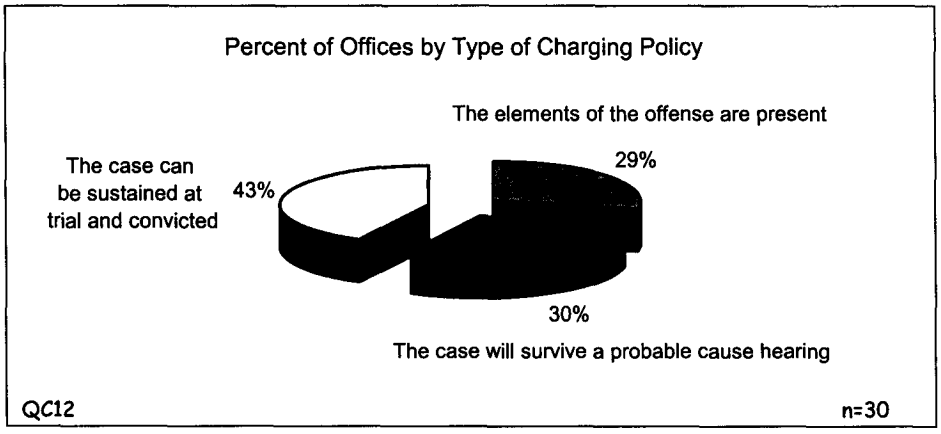
Uniform charging and declination policies are essential to all offices regardless of size. If charging decisions are to be made uniformly by attorneys, prosecutors should define what cases will not be prosecuted in addition to those that will be. Attorneys conducting intake review also need clear policy about when further investigations for certain types of cases should be requested and under what circumstances, cases should be abandoned. Declination guidelines are as important as acceptance guidelines. They need not be complicated or overly complex. What is important is that they exist, and exist in writing.



Less than one half of the offices have guidelines for declining cases or ordering further investigations.

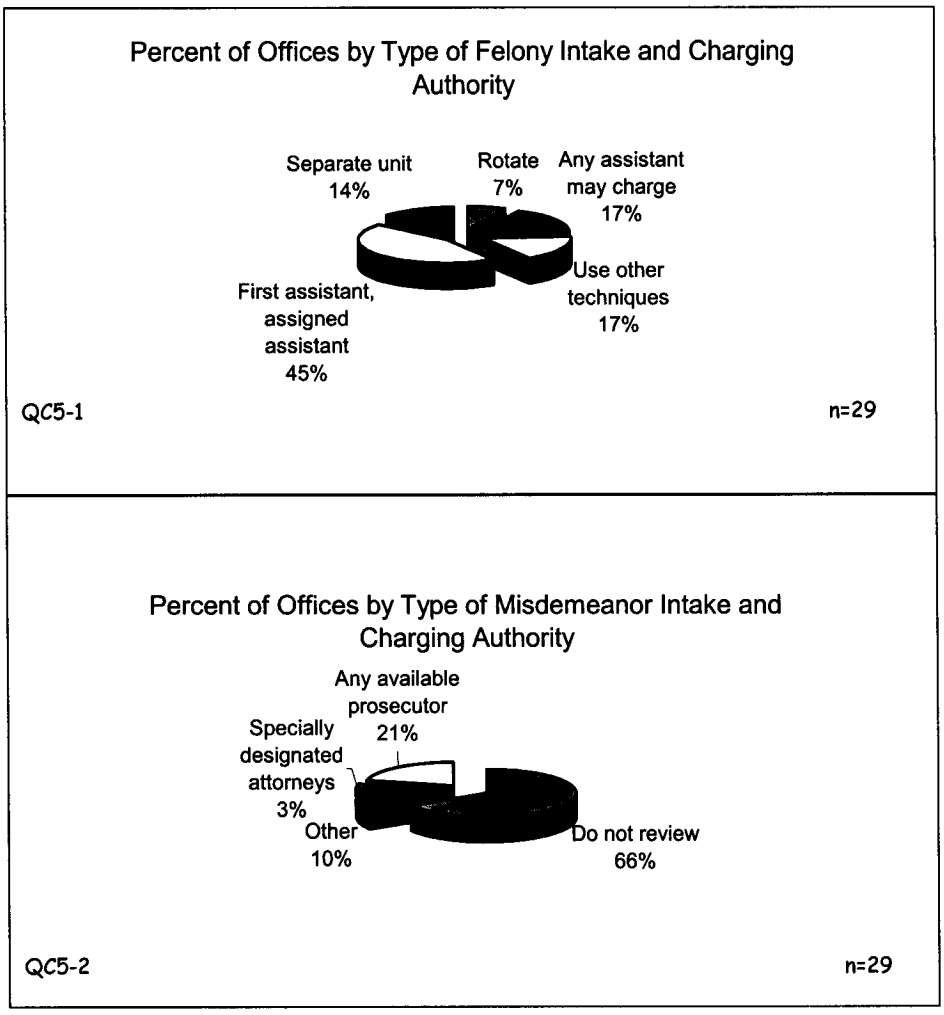
In addition to exercising control over case entry into the court, the prosecutors' charging policies affect disposition patterns. For example, if no screening is conducted and all cases referred by police are accepted, then we would expect high dismissal rates. On the other hand, if screening attorneys accept only those cases that can be sustained at trial, then more cases should be declined at intake and fewer cases should be dismissed for legal insufficiency.

Statewide, prosecutors use a variety of acceptance standards. Because few offices screen felonies before case filing, most offices (57 percent) have acceptance standards that are less restrictive than accepting only cases that can be sustained at trial (43percent).



3. Charging decisions made by experienced trial attorneys based on complete information

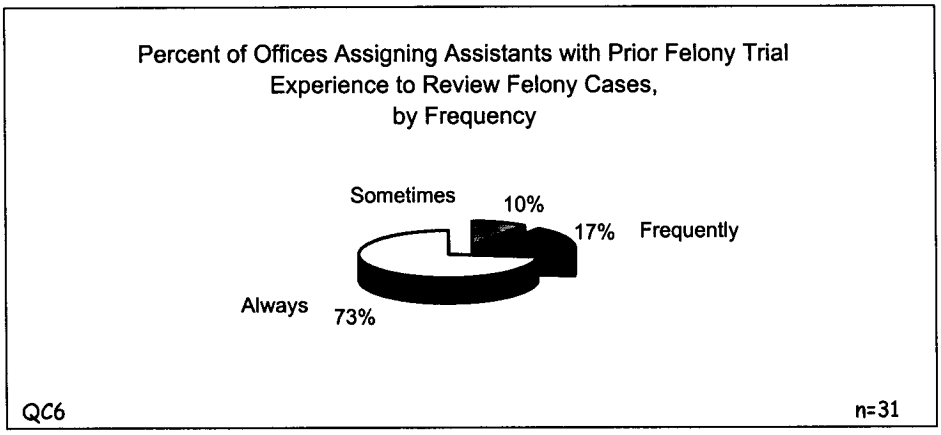
One indicator of policy and management control over the intake process can be seen in its organization. In small offices, screening is usually performed by one person, the prosecutor, the first assistant or some specially designated attorney. As the volume of work increases, prosecutors create intake units or teams to handle the work. Two situations need to be avoided. The first is "assistant shopping", the second is the use of inexperienced prosecutors to make charging decisions. Assistant shopping occurs when any assistant in the office is allowed to make charging decisions. Police tend to seek out attorneys who are more likely to accept cases they want to bring forward. The effect is a lack of uniformity in charging.



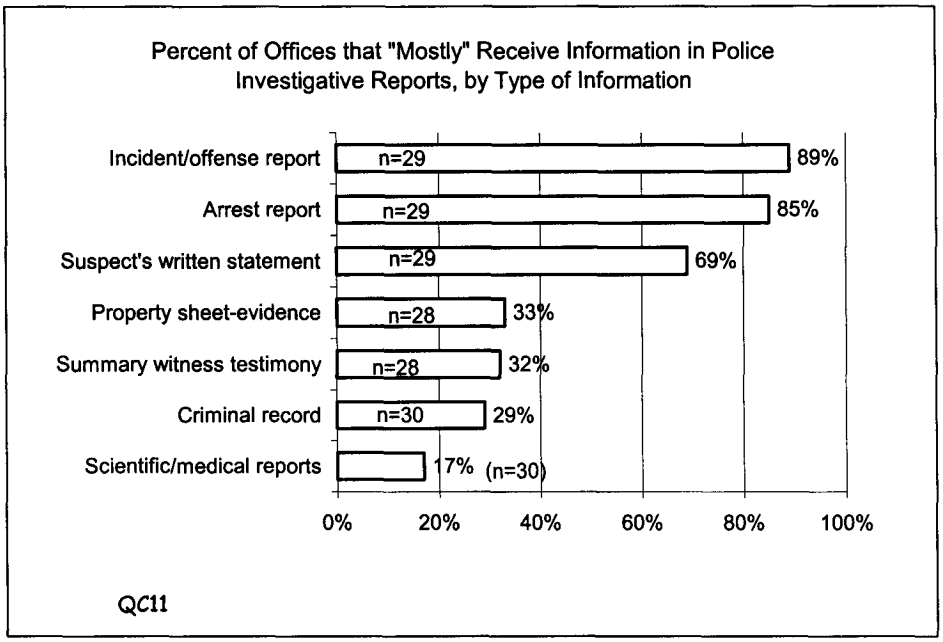
Most felony intake and screening functions (59 percent) are organized to restrict assistant shopping and enhance uniformity. The situation is reversed for misdemeanors. Case review is unrestricted or non-existent in 87 percent of the offices.

An important indicator of quality screening is the experience level of the attorneys assigned to the task. Experienced trial attorneys are critical to the intake process. Assigning inexperienced assistants to the intake function reduces the ability of prosecutors to evaluate the strength of the case and its likely dispositional route. Trial experience supports good judgments about which cases are likely to be convicted, which are likely to plead guilty and which are likely to be dismissed. This knowledge is valuable for case management. Although it is frequently difficult to attract experienced attorneys to case screening and review, various strategies have been successfully adopted. Most typically, attorneys are rotated through the intake desk. Those assigned first tend to be trial attorneys who are "burnt out". Rotation schedules should be flexible and be tailored to the characteristics of the personnel involved.

Almost three out of four offices *always* use experienced attorneys for felony case review.

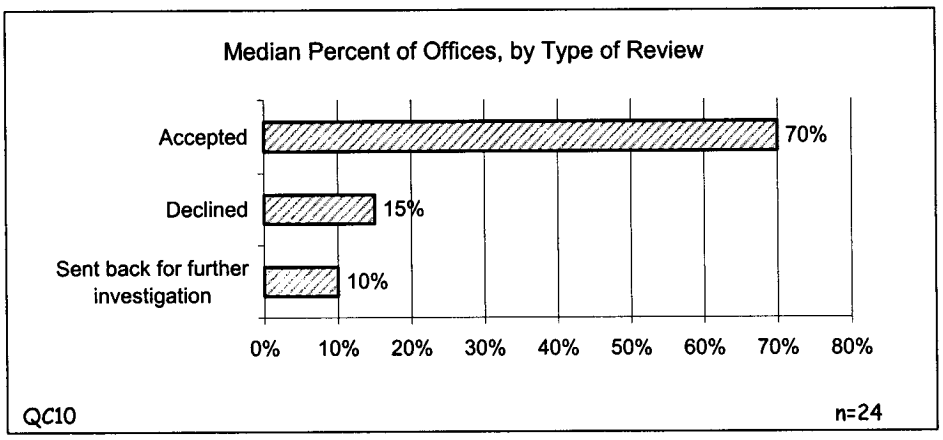


The foundation upon which charging decisions are made is a written record of the facts surrounding a case. The more complete the information, the better are the decisions of the intake and screening attorneys. Reports from law enforcement agencies should contain information about the incident, the arrest, a criminal history, the suspect's written statement, a written summary of witness testimony, property sheets for physical evidence and written scientific or medical reports. Missing or incomplete reports may result in inappropriate decisions. An indicator of the quality of charging decisions is the extent to which the above information is routinely provided to prosecutors.



Most offices (69 to 89 percent) receive police investigative files for charging that contain information about the offense, arrest and the suspect's written statement. Few offices (17 to 33 percent) receive information about the criminal record, witness testimony, evidence property sheet and scientific or medical reports at the time of charging.

The percent of cases accepted for prosecution, declined or sent back for further investigation provides insight into both law enforcement activities and the charging policies of prosecutors. If the acceptance rate is very high, e.g. 90 percent, and the declination rate is low relative to cases being accepted, two conclusions are possible. One is that the police agencies bring over strong cases that do not have to be declined; the other is that the prosecutor is not screening cases very well and is probably accepting a lot of cases that should be declined or investigated further. One way to distinguish between the two conditions is to look at the average grade given by prosecutors to the quality of police reports. If it is low, then it is more likely that prosecutors are not screening intensively.

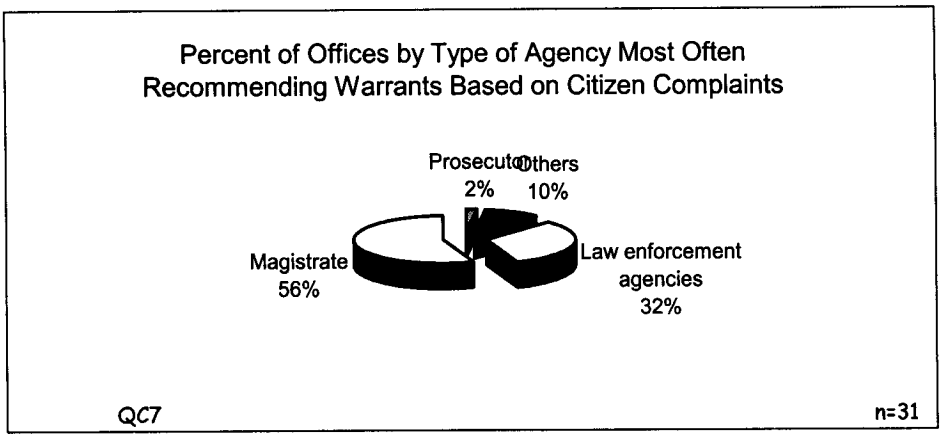


Statewide the median post-filing screening pattern is an acceptance rate of 70 percent and a declination rate of 15 percent. Referrals for further investigation are 10 percent. Only 17 percent of the offices decline more than 20 percent of their felony cases.

4. Citizen complaints screened by law enforcement, not magistrate or prosecutor

A troubling issue involves citizen complaints and the entity responsible for reviewing complaints and recommending warrants. If the review is conducted by magistrates who are not required to be attorneys and may have limited knowledge of the law, prosecutors may receive insufficient or inappropriate cases. If prosecutors conduct citizen complaint hearings, their knowledge of the facts will be based on one-sided, emotional and biased testimony. With little or no resources to investigate situations, prosecutors potentially are in real danger of making the wrong decision with fatal results. If law enforcement agencies conduct the initial reviews, they bring investigative skills and training, established procedures, and resources to resolve complaints.

Ideally prosecutors should review cases for legal sufficiency after law enforcement agencies have investigated them, and then make recommendations for warrants based on this review.



In a state with magistrates, citizen complaints are filed without prosecutorial review. In one third of the offices, warrants are recommended by law enforcement agencies. In one half of the offices, magistrates recommend warrants.

5. Programs available as alternatives to prosecution

If prosecutors exercise control over the gate to the courts, part of their discretionary authority includes declining cases or deferring prosecution. Not all cases referred for prosecution necessarily need it. It may be more appropriate to refer some cases to other alternatives. These alternatives may include deferred prosecution, mediation, or diversion. Sometimes, cases may better be resolved through the use of treatment programs, restitution or community service. As the number of alternatives to prosecution increases, the results may be more cost effective than formal criminal justice case processing. One indicator of the availability of alternatives is the use of mediation or dispute resolution.

Statewide, the majority of prosecutors (59 percent) use mediation or dispute resolution mostly for misdemeanor cases (56%) and citizen complaints (31%).

In North Carolina,

- 59 percent of prosecutor offices use mediation or dispute resolution for some categories of cases.
- The most frequent use is for misdemeanor cases (56 percent) and citizen complaints (31 percent).

CASE MANAGEMENT

Prosecutor offices were examined for practices that support the ability of the prosecutor to dispose of cases with acceptable sanctions or outcomes in a timely manner and with the least use of resources. These practices include:

1. Applying the concept of differentiated case management
2. Reductions in case processing time
3. Uniform and consistent plea negotiation and dismissal policies
4. Victim-witness activities

Statewide Compliance with GAPMAP

The median state level of compliance for case management is 44 percent. The range of scores among individual offices is between 89 percent and 8 percent.

It appears from the examination of the practices that improvements should be considered in the following areas:

- Give priority to reducing the percent of felony cases pleading guilty on the day of trial to less than 10 percent
- Increase the use of regularly scheduled pretrial conferences
- Monitor dismissals and control discretion among assistants

1. The nature of the court environment

Just as relationships between law enforcement agencies and prosecutors influence the type of prosecutorial screening, so do court environments affect case management. Therefore, before tests for compliance with case management principles are made, certain characteristics about the court should be obtained since they indicate areas in the court environment that may either enhance or restrict the prosecutors' ability to manage cases.

Judge availability and jurisdiction

The number of judges available for criminal cases limits the number of jury trials that can be held in one year. We use an approximation

of 25 jury trials per judge per year. That is an average of about two jury trials per judge per month.

If judges have a mixed docket of civil and criminal cases, then the number of court days available for criminal prosecution annually are reduced by the number of days set for civil cases annually.

If lower court judges cannot routinely take guilty pleas to felony cases, then prosecutors lose an important dispositional outlet in this court. Conversely, *trials de novo* increase the higher court's workload.

Changes or improvements to the adjudication process are more effective if chief judges have administrative authority over the bench.

If the felony courts are backlogged, then this suggests that either there is either a lack of court capacity or inefficient case processing procedures or both.

Court calendaring and organizational responses

If the court uses a master calendar assignment system, then prosecutors cannot use vertical prosecution (the assignment of cases to individual attorneys who are solely responsible for their prosecution) without creating scheduling conflicts and ultimately backlog. If the office has enough attorneys, the use of trial teams is an appropriate response.

If the court uses individual docketing systems, prosecutors are able to assign attorneys either to a judge or a courtroom or create trial teams or both. Efficiency and accountability is increased. Case scheduling and trial preparation time becomes manageable.

Case managements

Scheduling and managing case flow is best controlled when either prosecutors or individual judges set the dockets. Accountability is increased, knowledge about the circumstances of the case is improved, and court settings are more likely to result in the case moving forward.

Case management should extend to misdemeanor cases in addition to felonies. One indicator of case management is the designation of special days or sessions for disposing misdemeanor and/or traffic and moving violation cases. This type of practice gives recognition to the need to control high volume caseloads and speed up dispositions for non-contested cases.

The availability of alternatives to prosecution such as treatment programs, diversion programs, drug courts and their use tend to reflect progressive court systems that are willing to use alternatives to criminal adjudication. If prosecutors are actively involved in the referral and selection process of defendants, they record higher levels of satisfaction with alternative programs and their uses.

In North Carolina,

The court system statewide has the following characteristics:

- It is typically small.
  The median number of judges in a prosecutorial district is 6.
  Typically 2 judges regularly hear felony cases and 4 hear misdemeanor, juvenile and traffic cases.

- In most offices (56%) the judges carry a mixed docket of criminal and civil cases.

- The practice of taking guilty pleas to felonies in lower courts varies.
  37 percent of the offices said lower court judges will take pleas to felonies,
  28 percent said judges did not, and
  34 percent said judges took pleas to felonies "some of the time". [2]

- 59 percent of the jurisdictions reported the court used individual docketing systems.
  24 percent used a master calendar system.
  10 percent used a master calendar system until indictment

- How the chief judge exercised administrative control over the bench varied widely.
  28 percent of the offices reported the chief judge exercised extensive authority
  41 percent of the offices reported very limited or no authority.
  The rest of the offices (31 percent) reported that the chief judges either had limited administrative authority in some specific areas (22%) or operated by consensus only (9%).

[2] These responses may be due to different interpretations of the question.